

FILED

JUL 24 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) Criminal No. 08CR2318-BEN
11 Plaintiff,)
12 v.) FINDINGS AND RECOMMENDATION OF
13 MARCOS RODRIGUEZ-PORCAYO,) THE MAGISTRATE JUDGE UPON A
14 Defendant.) PLEA OF GUILTY WITH WAIVER OF
) OBJECTIONS AND THE PREPARATION
) OF THE PRESENTENCE REPORT

16 Upon Defendant's request to enter a plea of Guilty pursuant
17 to Rule 11 of the Federal Rules of Criminal Procedure, this
18 matter was referred to the Magistrate Judge by the District
19 Judge, with the written consents of the Defendant, counsel for
20 the Defendant, and counsel for the United States.

21 Thereafter, the matter came on for a hearing on Defendant's
22 plea of guilty, in full compliance with Rule 11, Federal Rules of
23 Criminal Procedure, before the Magistrate Judge, in open court
24 and on the record.

25 In consideration of that hearing and the allocution made by
26 the Defendant under oath on the record and in the presence of
27 counsel, and the remarks of the Assistant United States Attorney,
28 ///

1 **I make the following FINDINGS - that the Defendant**
2 **understands:**

- 3 1. the right to persist in a plea of "not guilty";
- 4 2. the right to a speedy and public trial;
- 5 3. the right to be tried by a jury, or the ability to
6 waive that right and have a judge try the case without
7 a jury;
- 8 4. the right to the assistance of counsel at trial;
- 9 5. that, at trial, there would be the right to confront
10 and cross-examine the witnesses against the Defendant;
- 11 6. that, at trial, there is the right to present a
12 defense, and the right to have witnesses subpoenaed to
13 testify on the Defendant's behalf;
- 14 7. that, at trial, the Defendant would have the right
15 against compelled self-incrimination;
- 16 8. the nature of the charge filed in this case;
- 17 9. the maximum possible sentence that could be imposed
18 (including imprisonment, fine, term of supervised
19 release, and mandatory special assessment), the effect
20 of a supervised release term, and that the sentencing
21 guidelines are only advisory so that the Court may
22 sentence Defendant up to the statutory maximum;
- 23 10. the terms of the plea agreement;

24 **I further find that:**

- 25 11. that Defendant's plea of guilty is made knowingly and
26 voluntarily;
- 27 12. the Defendant is competent to enter a plea; and
- 28 13. there is a factual basis for Defendant's plea.

1 **I therefore RECOMMEND that the District Judge accept the**
2 **Defendant's plea of guilty.**

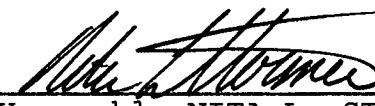
3 The sentencing hearing will be before United States District
4 **Judge ROGER T. BENITEZ, on AUGUST 18, 2008, at 9:00 A.M..**

5 Objections to these Findings and Recommendation were waived
6 by the parties at the hearing. The parties have also waived the
7 preparation of the Presentence report in this case.

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9

10 Dated: JULY 24, 2008



Honorable NITA L. STORMES
United States Magistrate Judge

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12 Copies to:

13 Hon. ROGER T. BENITEZ
U.S. District Judge

14 CARLA J. BRESSLER
15 United States Attorney

16 JENNIFER L. COON, FD.
Counsel for Defendant

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